



## DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

CECC-ZA

06 June 01

### MEMORANDUM FOR COMMANDERS/DIRECTORS, MAJOR SUBORDINATE COMMANDS, CENTERS, AND FIELD OPERATING ACTIVITIES

#### SUBJECT: REFORMS IN DELIVERY OF LEGAL SERVICES

1. During my VTC with MSC Commanders and Center/FOA Directors on May 3, 2001, the Office of Chief Counsel presented a system for modernizing recruitment of attorneys, and evaluating and improving the delivery of legal services throughout the Corps of Engineers. The purpose of the system is to rebuild the experienced but aging attorney workforce of the Corps from the ground up, and to enhance professional accountability and efficiency in the delivery of scarce corporate legal resources.
2. Most of the proposed elements of the Chief Counsel's plan were welcomed by the majority of Commanders and Directors. Recruitment programs for the entry level attorneys received strong support. I am hereby approving of all the Chief Counsel's proposals, revised after the VTC discussion and in accordance with my direction (Attachment A), for immediate implementation.
3. With regards to attorney performance ratings, the Division Commander will continue to serve as senior rater for Division Counsel, and the Deputy Chief Counsel will serve as their rater or intermediate rater. Division Counsel will serve as rater or intermediate rater for District Counsel. ERDC was restructured around the principles of an MSC. Therefore, ERDC's Counsel will be rated by the ERDC Commander, intermediate rated by the Deputy Chief Counsel, and senior rated by Director of ERDC. The ratings given by the Deputy Chief Counsel and Division Counsel will be in three professional areas: soundness of legal advice and representation; conformance with attorney Codes of Professional Conduct and Ethics; and identification and proper handling of regionally and nationally significant legal issues. No substantive changes in the Performance Plan rating criteria are necessary at this time.
4. The proposal that every attorney receive a formal performance rating by a higher level attorney was a source of concern for some Commanders. I believe the principle that every Corps attorney should be formally rated by at least one other Corps attorney is sound, from both a legal and a business perspective. Corps attorneys, like its licensed engineers, perform expert professional work which only another professional is capable

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of fully evaluating. Three specialized areas require formal professional evaluation: soundness of legal advice and representation; conformance with attorney Codes of Professional Conduct and Ethics; and identification and proper handling of regionally and nationally significant legal issues.

5. The principle that every attorney be rated by at least one other attorney can be implemented within the existing Command structures for Divisions and Districts. The Commanders remain the senior raters of Division Counsel, and District Counsel, if the Division Commanders so choose. Division Counsel will be rated by the Deputy Chief Counsel of the Corps as either a "rater" or "intermediate rater," and District Counsel will be rated by Division Counsel at the level deemed appropriate by the Division Commander, either as "rater" or "intermediate rater." The proposed system will result in increased attorney accountability for delivery of quality legal services, and also provide more meaningful performance information to the Commanders regarding attorneys within the MSC.

6. The concern that this concept might apply to other career series is unfounded. Most agencies of the federal government require attorney ratings for all attorneys, and the principle has not been applied to other career series. Division and District legal advice, implemented by program officials, may have profound impacts throughout the Corps. Corps attorneys are licensed professionals with responsibilities for legal aspects of all Corps activities. By law, a Corps attorney's ultimate client is the United States Army. Their specialized services include legal sufficiency reviews that protect against unauthorized and even criminal conduct by Corps officials. They are the only Corps professionals assigned to the excepted service, subject to judicial discipline for malpractice, incompetence, and ethics violations. Counsel's proposed rating system draws synergy from the current Corps Command system for attorney evaluations and systems prevalent throughout the rest of the federal government. It combines the best element of both systems. Since we have just completed the mid-year performance reviews, I want these changes made by the end of the month, so the system is operational for this performance rating cycle.

7. Formal ratings go beyond letter input. Formal ratings are taken seriously by both the rater and the evaluated attorney, and foster feedback throughout the rating period, not just at the end. Formal ratings become a part of the official record and enhance accountability. They also provide the best source of professional evaluations during frequent changes and transitions in Command. Some Commanders stressed the overall

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usefulness of "letter input" with its explanatory narrative, versus bulletized ratings. Therefore, both a formal rating and a narrative letter will be supplied to the Commander by the attorneys doing the rating.


8. The rating system outlined above should be implemented immediately by noting on the performance plan rating form that the Deputy Chief Counsel will serve as rater or intermediate rater for Division Counsel, and the Division Counsel will serve as rater or intermediate rater for District Counsel. ERDC's Counsel will be rated by the ERDC Commander, intermediate rated by the Deputy Chief Counsel, and senior rated by Director of ERDC.

9. The other Centers' legal assets should be treated as corporate assets just as each Center is a corporate asset. The rating structure will be modeled after the successful system at Humphreys Engineering Center Support Activity. The proposal was agreed to by the Commanders and Directors of the other Centers. The Chief Counsel is in the best position to evaluate the delivery of legal services from the Centers to the Command as a whole. The other Centers will be modeled after Humphreys Engineering Center Support Activity, with the Director or Commander of the Center serving as rater and the Chief Counsel serving as the Senior rater. I also want these changes made by the end of the month, so they are operational for this performance rating cycle.

10. The Chief of Engineers has been briefed on these legal reforms and advised of the comments of the Commanders and Directors during the VTC. He fully supports implementation of these reforms.

11. My point of contact for implementation of the directive is Robert M. Andersen, Chief Counsel, who can be reached at (202) 761-0018.

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MILTON HUNTER  
Major General, USA  
Deputy Commanding